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In the Supreme Court of the United States

October Term, 1975

No. 74-1577

ELMER BIAS AND LEON BIAS,
Petitioners,

vs.

STATE OF OHIO,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS
EIGHTH JUDICIAL DISTRICT OF OHIO

RESPONDENT'S BRIEF IN OPPOSITION

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To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

OBJECTIONS TO JURISDICTION

There is no substantial federal question involved which would require this Court to review this case.

The questions herein presented were raised in the Court of Appeals of Cuyahoga County, Ohio, and the Supreme Court of Ohio. The Court of Appeals affirmed the convictions. The Supreme Court of Ohio refused leave to appeal and dismissed an appeal as of right for the reason that no substantial constitutional question exists in this case.

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The Ohio Courts decided this case in accordance with statutes of the State of Ohio, the Constitution of the United States, and the applicable decisions of this Court. No substantial federal question is therefore presented by the petition for certiorari.

QUESTIONS PRESENTED

Respondent submits that the questions presented by the record in this case are more properly stated as follows:

1. Where the record reveals that an individual freely and voluntarily gives his consent to law enforcement officials who request to search the basement portion of his place of business, the search, properly conducted pursuant to a valid consent, is constitutionally permissible.

2. An exception to the requirements of both a warrant and probable cause is a search which is conducted pursuant to consent.

STATEMENT OF THE CASE

The petitioners, Elmer Bias and Leon H. Bias, were indicted by the Grand Jury of Cuyahoga County and charged with rape, in violation of Ohio Revised Code, Section 2905.01. At their arraignment, the petitioners entered a plea of not guilty with respect to the indictment. The case was brought to trial in the courtroom of the Honorable Thomas J. Parrino on May 14, 1969. Several days later, after hearing the evidence, the jury found the petitioners guilty of rape and the petitioners were sentenced to the Ohio State Penitentiary for the term provided by law.

Petitioners appealed to the Court of Appeals, Eighth District, Cuyahoga County. That court unanimously held that no error of constitutional magnitude intervened during the petitioners' trial. The Ohio Supreme Court dismissed the petitioners' appeal for lack of a substantial constitutional question.

STATEMENT OF THE FACTS

On the evening of December 23, 1967, Betty Jane Forrester went Christmas shopping at Sears Department Store in Cleveland, Ohio. After purchasing several gifts, she took a bus to a beauty shop at East 105th and Pasadina Avenue. As she was walking towards the shop, she met the petitioner, Elmer Bias, who offered her a ride home. The Bias brothers owned a shoe shine parlor in that area of town. Miss Forrester had known the defendants by working in a variety store next to the shoe shine parlor. She went into the store with Elmer Bias expecting that she would be driven home in a few minutes.

In the shoe shine parlor at that time were two juveniles, the two defendants and a man called Walter. Walter told Betty, "We should all rape you." (R. 80). The next thing that transpired is as follows (R. 80):

"Testimony of Betty Jane Forrester:

> . . . and the next thing I know someone cut off the lights and they started grabbing me, and somebody choked me and grabbed my hands and carried me down in the basement, and I was hollering and screaming. I couldn't fight three males off."

The evidence revealed that the Bias brothers carried Betty Jane into the basement and placed her on a rollaway bed. They tied her hands with an electrical cord and her legs were spread apart and likewise tied with

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some electrical cord. The defendants then proceeded to rape Betty Jane Forrester. After they had raped her, they untied her and Betty said (R. 86):

> "A. I told them I was going to the police and all of them laughed."

Further, she testified (R. 87):

> ". . . And so they laughed, and they said, 'There is five of us against one of you, and you being black and not a white girl, nobody will believe you, . . ."

Betty got dressed, ran outside the store, went home and called the police. She was taken to the Forest City Hospital by members of the police department. At the hospital, Dr. Michael J. Krisko, a gynecologist, examined Betty Jane Forrester and found scratches on both wrists of the victim. The doctor testified that he examined her sometime after 1:00 in the morning. Officer Belsario, who took Betty Jane to the hospital, observed indentations or marks in her ankles and wrists. They also noticed that her dress had been ripped.

Other witnesses who resided in Betty Jane's home verified that her wrists and ankles were indented with marks and her dress was ripped.

On December 24, 1967, the petitioner, Leon Bias, was arrested in his place of business for the crime of raping Betty Jane Forrester which occurred late in the evening of December 23, 1967. A short time later, his brother Elmer Bias was also arrested on the same charge.

Miss Forrester informed the police department of the rape at approximately 11:32 p.m. on December 23, 1967. The case was immediately investigated by Detective Ferris, of the Cleveland Police Department, during the early morning hours of December 24, 1967. During the course of

his investigation, Detective Ferris interviewed the victim at the hospital and also interviewed the hospital personnel who attested to the fact that she had recently experienced sexual intercourse. Further, by observation from hospital reports, he learned of lacerations of her wrists which gave credence to her testimony that she had been tied and raped.

Detective Ferris, as a result of this information, unsuccessfully attempted to find the Bias brothers who had been identified as the perpetrators of this crime by the victim.

At approximately 8:30 a.m. on December 24, 1967, at the changing of the shift, Detective Ferris relayed the information which he had collected to Detective Howard who thereafter went to the shoe shine parlor owned by the Bias brothers. Upon arrival at the place of business, which was also the scene of the rape, Detective Howard, with his partner and two uniformed policemen, entered the establishment and confronted Leon Bias.

After Leon Bias identified himself, he was given his constitutional rights and the detectives requested to search the basement portion of his store during business hours. The defendant gave his consent to the police to search the premises. This is indicated in the record at page 37 where the petitioner states (R. 37):

"Q. And they asked you did you have a basement, you say?

A. They asked me did I have a basement and where was it at.

Q. And what did you say to them?

A. I told them yes, and they said they would like to have a look at it.

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Q. What did you say to that?

A. I told them okay, and we went in the basement, . . ."

The law enforcement officers who testified for the State on the motion to suppress stated that the petitioner gave him his consent to search the basement.

The interior of the basement revealed certain electrical cords, a roll-away bed and empty packages that contained prophylactics. Physical evidence was offered and introduced at the petitioners' trial, and subsequently a jury found them guilty.

REASONS FOR DENYING THE WRIT

1. Where the record reveals that an individual freely and voluntarily gives his consent to law enforcement officials who request to search the basement portion of his place of business, the search, properly conducted pursuant to a valid consent, is constitutionally permissible.

The petitioners contend that the search and seizure of incriminating evidence found in the basement portion of the business establishment should have been suppressed by the trial court. The contention is without merit. An examination of the entire record reveals that the petitioner freely and voluntarily gave his consent to search his premises to law enforcement officials. It is axiomatic that a search properly conducted pursuant to a valid consent is constitutionally permissible. See the recent decision of *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

The record overwhelmingly reveals that the petitioner gave police his full consent and permission to search the premises. For example, the petitioner, under questioning by his own attorney, states emphatically that he gave police permission to search the basement portion of his premises (R. 37):

> "A. They asked me did I have a basement and where was it at.
>
> Q. And what did you say to them?
>
> A. I told them yes, and they said they would like to have a look at it.
>
> Q. What did you say to that?
>
> A. I told them okay, . . ."

Nowhere in the record is there any indication of any coercion, either direct or implied, to obtain the consent from this petitioner. The trial court in a well reasoned opinion, found that consent was present and the subsequent search valid.

2. An exception to the requirements of both a warrant and probable cause is a search which is conducted pursuant to consent.

Petitioners contend that consent searches are improper where no warrant was obtained. Again reference is made to *Schneckloth v. Bustamonte, supra,* where the court has stated that the exception to the requirements of both a warrant and probable cause is a search which is conducted pursuant to consent. In fact, the scope of the search is as broad as if the individual had a warrant. See *Schneckloth v. Bustamonte,* 412 U.S. 218 at 243.

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CONCLUSION

In conclusion, the respondent submits that the petition herein fails to present any question of constitutional dimension justifying review by the Court. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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